119-240

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 331.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY, APPELLANT,

vs.

JOHN W. GRAYSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED OCTOBER 2, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 331.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY, APPELLANT,

vs.

JOHN W. GRAYSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

INDEX.

	Original.	Print.
Stipulation as to printing record	*a*	1
Transcript from State court	1	1
Original bill	1	1
Petition for removal	98	16
Bond for removal	100	16
Motion to remand	184	18
Certified copy of decree rendered in State court	185	18
Order remanding cause to State court	187	19
Appeal prayed and allowed	187	19
Opinion	188	20
Petition for leave to amend petition for removal	195	23
Order denying leave to amend petition for removal	196	23
Bond	196	24
Clerk's certificate	199	25
Assignment of errors	200	25

JUDD & DETWEILER, PRINTERS, WASHINGTON.

a In the Supreme Court of the United States.

EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY, Appellant,

vs.

JOHN W. GRAYSON *et al.*, Appellees.

It is agreed that the above-entitled cause, now pending in the Supreme Court of the United States, shall be docketed and advanced, & that the same shall be submitted to the Court without the record being printed, except so much thereof as is necessary to put before the Court the merits of the appeal, namely, whether the cause should have been remanded to the State court. Said printed record to contain the original bill of complaint, without the exhibits thereto, the petition & bond for removal filed by appellant in the State chancery court, the motion of appellee, Jno. W. Grayson,
b made in the United States circuit court, to remand the cause and the decree and opinion of Justice Woods remanding the same to the State court.

F. P. WARD, &
R. W. WALKER,
Counsel for Appellees.
MILTON HUMES,
Counsel for Appellant.

[Endorsed:] Supreme Court U. S., 1884. October term. No. 975. The East Tennessee, Virginia & Georgia R. R. Co., appellant, *vs.* Jno. W. Grayson *et al.* Stipulation as to printing portions of record. Office Supreme Court U.S. Filed Nov. 13, 1884. James H. McKenney, clerk.

1 *Original Bill.*

Transcript from Chancery Court, First District, Eastern Chancery Division of Alabama.

To the honorable the chancellor of the eastern division of the State of Alabama, sitting in chancery for the first district thereof:

Your orator, John W. Grayson, brings this, his bill of complaint, against the Memphis and Charleston Railroad Company, a corporation existing under the laws of the States of Tennessee, Alabama, and Mississippi; and the East Tennessee, Virginia and Georgia Railroad Company, a corporation existing under the laws of Tennessee and Georgia, and thereupon complaining says:

Par. 1.

That he is a resident citizen of the county of Madison, in the State of Alabama, and is over the age of twenty-one years; and that he is a stockholder in the said Memphis and Charleston Railroad Company, and has been such stockholder since the 23rd day of of March, in the year 1870, and he files this bill in his own behalf, and in behalf of all the other stockholders in said Memphis and

Charleston Railroad Company, who may come in and contribute to the expenses of this suit.

Par. 2.

That the said Memphis and Charleston Railroad Company is a corporation created by and existing under an act of the
2 General Assembly of the State of Alabama, approved on the 7th day of January, in the year 1850, and the acts amendatory thereof.

A copy of said act of incorporation and all amendatory acts is herewith filed marked Exhibit No. 3, and prayed to be considered as part of this bill. The preamble to the said act of incorporation recites, "Whereas, an act was passed by the State of Tennessee, bearing date the 2nd day of February, 1846, and the same was amended by an act of the same State, dated Feb. 4th, 1848, for the formation of a company under the name and style of the Memphis and Charleston Railroad Company, for the purpose of establishing a communication by railroad between Memphis, Tennessee, and Charleston, South Carolina," etc. The second section of said act, after conferring on said company the right of way adds, "and said company shall have and enjoy all the rights, powers, and privileges granted them by the acts of incorporation above mentioned," (that is, the acts of the Legislature of Tennessee referred to in the aforesaid preamble,) "and shall be subject to all the liabilities and restrictions imposed on the same."

Par. 2½.

3 The said Memphis and Charleston Railroad Company is also a corporation created by and existing under an act of the Legislature of the State of Tennessee, approved February the 2nd, 1846, and acts amendatory thereof. A copy of said act of incorporation and all amendatory acts is herewith filed marked Exhibit No. 4, and prayed to be taken as part of this bill, except the general powers conferred upon all railroad companies, such as the grant of the right of way, etcs., etcs.; the 33 section of said act of incorporation is in these words: "The said company shall possess such additional powers as may be convenient for the due and successful execution of the powers granted in this charter, and for the successful construction and management of the work." None of said amendatory acts confer on said company any greater powers.

Par. 3.

That heretofore, to wit, on the 2nd day of June, 1877, one R. T. Wilson, representing himself to be the president of the Memphis and Charleston Railroad Company, and one S. R. Cruse, representing himself to be the secretary and treasurer of said Memphis and Charleston Railroad Company, and the said R. T. Wilson as
4 president of the East Tennessee, Virginia and Georgia Railroad Co. and one James G. Mitchell, as secretary thereof, executed an instrument of writing purporting to be a lease by the Memphis and Charleston Railroad Company, whereby the said

Memphis and Charleston Railroad Co. undertook to lease its line of railroad extending from the City of Memphis, Tennessee, to Stevenson, Alabama, with its branches known as the Somerville and Florence branches, and the Washington street branch in the city of Memphis, and also all the rights and privileges of the Memphis and Charleston Railroad Co. under and in pursuance of the agreement of said Railroad Co. under and in pursuance of the agreement (made a company with the Nashville and Chattanooga Railroad Co. now consolidated into the Nashville, Chattanooga and St. Louis Railway), executed by the two companies respectively on the 23rd of June, 1858, and the 26th of July, 1858, providing for certain rights of transportation on the railroad line between Stevenson and Chattanooga, belonging to the Nashville and Chattanooga Railroad Co., including all depots and station houses, equipments and appurtenances of every kind and nature whatsoever, belonging to the said Memphis and Charleston Railroad Co. and branches unto the said East Tennessee, Virginia and Georgia Railroad Company
5 for a period of twenty years, from and including the first day of July, 1877, upon the terms and conditions particularly set out and recited in said pretended lease. A copy of said pretended lease is herewith filed and prayed to be taken as part of this bill, marked Exhibit No. 1.

Par. 4.

Among other conditions recited in said lease, is the stipulation that the said East Tennessee, Virginia and Georgia Railroad Co. was to operate the said Memphis and Charleston railroad and branches, including the use of the said rights and privileges under said contract with the Nashville and Chattanooga Railroad Co. for account and risk of the said Memphis and Charleston Railroad Company either in the name of the East Tennessee, Virginia and Georgia Railroad Co. as lessee, or in the name of the Memphis and Charleston Railroad Co. as lessor, as the said lessee may from time to time elect.

Par. 5.

Among other stipulations contained in the said pretended lease is the following: That out of the net earnings of the said Memphis and Charleston railroad, so to be run by the said East Tennessee, Virginia and Georgia Railroad Co. before there should be any accounting by the East Tennessee, Virginia and Georgia Rail-
6 road Co. to the Memphis and Charleston Railroad Co. in regard to the net earnings of said Memphis and Charleston railroad, the said East Tennessee, Virginia and Georgia Railroad Co. should retain all such amounts as it may become necessary to pay, for damages to persons or property incurred in the course of operating the said Memphis and Charleston railroad or branches by said East Tennessee, Virginia and Georgia Railroad Co.

Par. 6.

Said pretended lease contains, among other stipulations, the following: That after the payments and deductions particularly speci-

fied in said lease, the said lessee shall apply the residue of the amount of the net income and earnings of said Memphis and Charleston Railroad, and premises to such extent as shall be required for the purpose, to the payment of the current interest, from time to time becoming due and payable during the existence of this lease upon the now existing bonded indebtedness of said lessor, and upon its indebtedness to the State of Tennessee, for or in respect of the amount of Tennessee State bonds heretofore loaned, or delivered by the State, to or in aid of said Memphis and Charleston Railroad Co.

7 Whether such indebtedness to the State of Tennessee be at the time for payment of such interest thereon held by said State or by any assignee or transferee of such indebtedness or of the State's right in respect thereof, and likewise such current interest from time to time upon any and all bonds of said Memphis and Charleston Railroad Co. which may be hereafter issued in substitution for or for the purpose of discharging or raising the means to discharge any of its now existing bonds, or for liquidating, providing for, representing, or securing its present indebtedness to the State of Tennessee, whether these bonds last referred to be issued to the State or to any one who may legally become or be the assignee of the said debt held by the State with its accompanying lien.

7th Par.

Said pretended lease contains, among other things, the following stipulation by way of proviso: Provided further, however, and it is hereby agreed that the aggregate amount of the bonded debt of the lessor and of such indebtedness of the lessor to the State of Tennessee, or its assigns, the interest whereon is above provided to be paid by the lessee out of the amount of surplus net income after payment of expenses and prior charges or deductions as aforesaid, is not to be

8 a sum that will make the annual interest charged for the whole thereof more than three hundred and ten thousand dollars, whereof not exceeding one hundred and fifty-five thousand dollars may be payable in gold and the residue in United States currency; and if the same shall at any time exceed the above limited aggregate and the payment of interest by the lessee hereunder, so far as there shall be sufficient funds therefor, shall be upon the bonds of the earlier issue made while within the limit, rejecting those of the late issue made beyond the limit.

8th Par.

Said pretended lease contains the following stipulation among others: And it is hereby further provided, declared, granted, and agreed by and between the parties hereto, as well for the purpose of securing the lessee in the possession of the demised premises free from such effects as would or might result from the foreclosure or enforcement of mortgage or other liens upon said demised premises in consequence of non-payment of interest due or for other good and valuable considerations the said parties thereunto moving that the application hereinbefore made of the amount of surplus net earnings or income of

said demised premises, in the hands of order, or owing from the lessee to the payment of current interest from time to time
9 upon lessor's bonded indebtedness, and indebtedness to the State of Tennessee or its assigns in the classes under and manner hereinbefore provided for its intended to be, and shall be, and is hereby made irrevocable, so long as the said demised premises shall remain in the hands or possession of the lessee under this indenture.

9th Par.

That said pretended lease contains, among other things, the following stipulation: That not exceeding five thousand dollars per annum is to be applied by the lessee for keeping up the corporate organization of the lessor and maintaining the necessary agencies for the transfer of its stocks and bonds; and your orator avers that under said lease the only power retained by the lessor was the right simply to keep up its corporate organization and such agencies as were necessary for the transfer of its stocks and bonds, and for this purpose that the expenditure of the lessee was, by the terms of said lease, limited to five thousand dollars per annum. . .

10th Par.

Said pretended lease contains, among other stipulations, the following: 5th. The party of the second part shall have the right to employ in the operation of the said leased road and branches
10 and in carrying on its operations as lessee hereunder, such of the officers and agents of the party of the first part as it may from time to time elect to employ, and for the default or misconduct of persons, whether agents or employees of the lessor or not, whom the lessee shall in good faith employ in or about the operations of the said leased road and branches, or in conducting the operations as lessee hereunder, the said party of the second part shall not be responsible; and in order to promote, as far as can be consistently done, the unification of interest and management sought to be established by this lease and heretofore and now existing in part between the two corporation parties hereto, it is declared that they may from time to time elect the same persons for president and vice-president and employ the same persons in the conduct of the business of the two roads.

11th Par.

Said pretended lease contains, among other things, the following stipulation: 6th. This lease is made, among other reasons, for the purpose of so improving the credit of the party of the first part as to enable it to induce certain parties to purchase and become assignees of the indebtedness of the lessors to the State of
11 Tennessee, and for which said State holds a lien on that portion of the lessor's railroad which is situated in the State of Tennessee under and in pursuance of the existing laws of the said State allowing said purchase to be made with the assent of the rail-

road company indebted to the State, and be paid for in Tennessee State's bonds or coupons at par, and the debt held by the State, with its liens and securities therefor, to be thereupon transferred to the purchaser, with like rights and liens as the State had, and in the further hope and expectation that if this object can be accomplished, the lessor will be enabled, by means of new arrangements to be made with parties so purchasing and becoming assignees of the lessor's debt to the State, and by other arrangements, so to arrange, classify, and reduce its indebtedness, as with the aid therein of three hundred and twenty thousand dollars of Nashville and Chattanooga Railroad Company's bonds now belonging to the lesssor, or the proceeds thereof, to reduce the amount of the lessor's bonded debt and indebtedness to the State of Tennessee or its assigns, to such aggregate sum as will leave the annual interest charge thereof not more than the sum which is hereinbefore limited in that behalf, viz: three hundred and ten thousand dollars.

12 Whereof not more than one hundred and fifty-five thousand dollars may be payable in gold and the residue in United States currency; and it is hereby expressly understood and agreed, by and between the parties hereto, anything hereinbefore contained to the contrary notwithstanding, that in case the lessor shall not, before the first day of Sept. next, be enabled to accomplish such arrangements as will reduce its bonded debt or indebtedness to the State of Tennessee, or its assigns, to or within the sum by this indenture limited therefor, then this lease shall not go into effect, but this indenture shall become and be void and of no effect, and in case this result be not attained by the first day of July next, then from that time the operation and effect of this lease and the possession of the lessee thereunder shall be suspended until either such result be attained by or before the first day of September, or until the lease shall be abrogated by the failure to attain such result by that day.

12th Par.

Said pretended lease contains, among other things, the following stipulation:

SEC. 12. Whereas Messrs. R. T. Wilson and Company and C. M. McGee, as individuals, have agree to raise themselves, and

13 for other bondholders of the Memphis and Charleston Railroad Co., one-half of the sum of money required to purchase the debt and lien of the State of Tennessee now existing against said company, and on its railroad in said State and other property, for State bonds issued to and in aid of said company, on condition that any other person or persons will raise, or cause to be raised, the other half, and on the condition that those supplying the money for said purpose shall be repaid the same, and shall have all the rights, privileges, and liens transferred for their security, which said State of Tennessee now holds as security for the payment of the indebtedness to the said State, and that James C. Mealy, Napoleon Hill, R. C. Bethel, John D. Ratter, W. W. Garth, and George P. Beirne, be appointed a committee to endeavor to raise the half as aforesaid,

and when so raised the said committee, in conjunction with Messrs. R. T. Wilson and C. M. McGee, shall see that the payment of the money so raised as aforesaid shall be secured by the transfer of the lien and rights of the State under the internal improvement acts of the same, and such other additional arrangements as shall tend to secure, as far as possible, the objects, interests, and purposes
14 of this instrument, now if the money so raised under this sec. 12 shall be forthcoming by July 1st, 1877, then the foregoing lease shall be null and void; otherwise to remain in full force and effect. Said pretended lease concludes as follows:

In witness whereof the parties hereto, in pursuance of resolutions of their respective boards of directors and with the approval of the stockholders of said party of the first part, duly given at a regular meeting of such stockholders, have hereunto respectively affixed their corporate seal and caused these presents to be attested by their respective presidents and secretaries the day and year first above written.

Your orator avers that on the 2nd day, December, 1879, the aforesaid Robert T. Wilson and the aforesaid S. R. Cruse, acting respectively as president and treasurer and secretary of said Memphis and Charleston Railroad Co., and the aforesaid Robert T. Wilson and J. M. Mitchell, acting respectively as president and secretary of the East Tennessee, Virginia, and Georgia Railroad Co., entered into an agreement in writing, by which they undertook to modify the said pretended lease of June 2nd, 1877, by certain recitals, stipulations, and covenants contained in said instrument of date, December 2, 1879.

15 A copy of said agreement of date, December 2d, 1879, is herewith filed, marked Exhibit No. 2, and prayed to be taken as part of this bill.

Among other things said modified agreement contains the following recitals:

Whereas heretofore and under date of second day of June, 1877, an indenture of lease for a period of twenty years from and including the first day of July, 1877, was executed by and between the parties hereto, and whereas the party of the second part has become and is the purchas-rs and owners of the coupons from bonds of the party of the first part hereinafter mentioned to the amount of $———.

And whereas coupons upon bonds of the party of the first part are about falling due, and the party of the first part is unable from its own resources to make provision therefor, now, therefore, this indentore witnesseth that for and in consideration of the mutual promises herein contained and for other good and valuable considerations the receipt whereof by each of said parties is hereby acknowledged, the said parties have covenanted and agreed, and do hereby covenant and agree, with each other as follows, that is to say: First the party of the second part agrees that for the period of three years from the day of the date of these presents in case the agreement of the
16 second day of June, 1877, as modified by these presents shall so long continue in force, and no proceedings shall be taken

for the foreclosure of any mortgage or deed of trust upon any part of the line of railroad of the party of the first part, whereby or under which the party of the second part is likely to be or shall be dispossessed of the road of the party of the first part, it will promptly provide funds for the purchase of all outstanding interest coupons from so called "First Mortgage Company Bonds," "Second Mortgage Company Bonds," "First Mortgage Tennessee Division Bonds," "Consolidated Gold Bonds," and from such bonds as may be executed in lieu of, or substitution for, any or all of the existing bonds of the said party of the first part, amounting in the aggregate to about ($4,225,000.00) four millions two hundred and twenty-five thousand dollars, bearing interest at the rate of seven per centum per annum, of the parties of the first part, which shall be expressed upon their face to be payable during that period from bonds not exceeding, however, the amount of ($4,225,000.00) four millions two hundred and twenty-five thousand dollars, which coupons, if the net earnings of the said party of the first part shall not suffice to pay under
17 the provisions of said agreement of the 2nd day of June, 1877, and in case any trustee or beneficiary under any mortgage or deed of trust upon any property of the party of the first part shall not proceed to the foreclosure of the said mortgage or deed of trust, the party of the second part shall not itself, during such period of three years from the day of the date of these presents, take proceedings for the foreclosure of the mortgage or deeds of trust or any of them securing the coupons so purchased or to be purchased by the party of the second part, it being understood, however, that the party of the second part shall be and become the owner of such coupons so purchased and to be purchased by it, and shall be entitled to all the rights and liens of the bonds from which said coupons are detached upon the property of the party of the first part and that the coupons shall at all times after the date of their maturity, according to their terms, be presently due, and that there shall be no extension or postponement of the time of payment of such coupons so purchased or to be purchased by virtue of this agreement.

Said modified agreement contains, among other things, the following stipulation:

18 2nd. Subdivision eight of said lease is hereby cancelled and annulled, and in place thereof there shall be, and there is hereby substituted the following provis-on:

8th. The party of the second part has the right to cancel and surrender this lease at any time after three years, upon giving at least six months previous notice in writing to the party of the first part, and all provisions of said lease whereby the said party of the first part has the right prior to the first day of July, 1897, to cancel and surrender the said agreement of lease are hereby cancelled, annulled, and set aside, provided however, that it shall be the duty of the party of the second part to continue to provide money with which to buy and hold the coupons as aforesaid, so long as the party of the second part continues to operate the road under the said lease, and in case the party of the second part fails to thus provide the money with which to buy the coupons as aforesaid, then and in this case the

st part shall have the right to cancel the said lease
parties of the fi and conditions therein provided for, but this shall
upon the termider or prevent the collection of the coupons purchased
not affect or hif the second part in any of the modes or by any of the
by the parties secured to it by the stipulations of this agreement, or
19 me the mortgages securing the bonds from which the said
coupons are detached, and the party of the second part shall
be entitled to interest on the coupons purchased by them until paid
at the same rate as the coupons would bear if protested at maturity
for non-payment.

Said modified agreement contains among other things the following stipulation.

4th. "It is hereby understood, declared, and agreed that the party of the second part shall not be liable in the future nor in the past for the income resulting from the operations of the road of the party of the first part, or otherwise, under the aforesaid lease as herein modified, so long as the party of the second part may elect to, and shall operate the road of the party of the first part through, by or under the officers of the Memphis and Charleston Railroad Company, and while said officers receive and disburse the revenues of said road, nor for any loss resulting while said road is operated by the party of the second part with due diligence and good faith.

Par. —

Your orator charges that when said pretended lease of
20 date June 2nd, 1877, and also when said modification thereof,
of date December 2nd, 1879, were executed, the said R. T. Wilson, was a large stockholder in the East Tennessee, Virginia and Georgia Railroad Company.

Said modified agreement recites that it is executed in pursuance of resolutions of their respective boards of directors, and with the approval of the stockholders of said party of the first part, duly given at an annual meeting of said stockholders on the 2nd day of December, 1879, in Huntsville, Alabama, and at an annual meeting of the stockholders of the second part, holden on December 5, 1879, at Knoxville, Tennessee.

Par. 13.

Your orator charges that the several contracts hereinbefore referred to, by which it was attempted to lease the said Memphis and Charleston railroad to the said East Tennessee, Virginia and Georgia Railroad Co. are *ultra vires*, against public policy, and null and void.

Par. 14.

Your orator charges that said lease was obtained by the said East Tennessee, Virginia and Georgia Railroad Co. for the purpose and with the intent of procuring the absolute control and management of the business of said Memphis and Charleston railroad, of
operating and directing the same for the exclusive benefit of
21 said East Tennessee, Virginia and Georgia Railroad Co. and
your orator charges that since the execution, as aforesaid, of

said pretended lease, the said East Tennessee, Virginia and Georgia Railroad Co. have exclusively controlled, managed and directed the operations of the said Memphis and Charleston rail[road], for the sole benefit and advantage of the East Tennessee, Virginia and Georgia Railroad Co. to the great detriment and injury of the stockholders of the Memphis and Charleston Railroad Co.

Par. 15.

Your orator avers that the said East Tennessee, Virginia and Georgia Railroad Co. has no power or authority under its charter, or otherwise, to become the lessee of any railroad in the State of Alabama, and to operate the same in the manner in which it now operates the said Memphis and Charleston railroad, and your orator further avers that the said Memphis and Charleston Railroad Co. had no power by virtue of its charter under the laws of Alabama to make and enter into such a contract as in evidinced by said pretended lease, and said modification thereof.

Par. 16.

Your orator charges that since said pretended lease, and
22 more especially since the modification thereof of date December 2nd, 1879, the said East Tennessee, Virginia and Georgia Railroad Company, have appointed all of the officers, agents and employes, who manage and conduct the business of said Memphis and Charleston railroad; that said officers, agents and employes are amenable only to the said East Tennessee, Virginia and Georgia Railroad Company, that all contracts of whatever character, made in the name of the Memphis and Charleston railroad, are in fact made by the East Tennessee, Virginia and Georgia Railroad Company; that all moneys received from whatever source for said Memphis and Charleston railroad are accounted for to and disbursed under the orders and directions of the East Tennessee, Virginia and Georgia Railroad Company; that all the officers, agents and employes connected with the management of the Memphis and Charleston railroad, look to and receive their compensation from the East Tennessee, Virginia and Georgia Railroad Company; that the passengers and freight rates of said Memphis and Charleston railroad are established and regulated solely by the East Tennessee, Virginia and Georgia Railroad Company, and that all the property of whatsoever kind and all the business of said Memphis and
23 Charleston railroad is in the exclusive possession of said East Tennessee, Virginia and Georgia Railroad Company, and that the same is in all things controlled, managed, and used for the exclusive benefit of the East Tennessee, Virginia and Georgia Railroad Company.

Par. 16½.

Your orator charges that the East Tennessee, Virginia and Georgia Railroad Company is a non-resident and foreign corporation; that neither the president nor any member of the board of

directors, nor the superintendent, nor any other officer of the East Tennessee, Virginia and Georgia Railroad Company resides in or is a resident of the State of Alabama; nor is any part of the said East Tennessee, Virginia and Georgia railroad located in the State of Alabama.

Par. 17.

Your orator charges that although the said Memphis and Charleston Railroad Company has a board of directors and a president of said board, yet they are mere passive agents in the hands of the said East Tennessee, Virginia and Georgia Railroad Co., subservient to its directions and acting only in subordination to its authority, that said president and board of directors exercise none of the duties pertaining to their
24 said offices unless to convene for the purpose of mere formal action suggested and controlled by the said East Tennessee, Virginia and Georgia Railroad Co., and limited simply to keeping up the organization of said Memphis and Charleston railroad in the interest and for the purpose of the said East Tennessee, Virginia and Georgia Railroad Company.

Par. 18.

Your orator charges that when said East Tennessee, Virginia and Georgia Railroad Company acquired, as aforesaid, the management and control of the Memphis and Charleston railroad, the said Memphis and Charleston Railroad Co. owned a full equipment of locomotives, cars, and rolling-stock, sufficient to transact the business of said Memphis and Charleston Railroad Co., the same being of the value of three hundred thousand dollars; that since the East Tennessee, Virginia and Georgia Railroad Co. obtained possession and control of said locomotives, cars, and rolling-stock, the same have been diverted from the uses of the Memphis and Charleston railroad, and applied to the use and for the benefit of the East Tennessee, Virginia and Georgia Railroad Co.

Par. 19.

Your orator charges that since the said East Tennessee, Virginia and Georgia Railroad Co. obtained possession as afore-
25 said of said Memphis and Charleston railroad the said East Tennessee, Virginia and Georgia Railroad Company has fixed the rates for transportation of freight and passenger to be paid to said Memphis and Charleston Railroad Co. as its proportion of the whole rate charged for through freights and passengers at a sum largely less than of right should have been, and is the sum that should be paid the said Memphis and Charleston Railroad Company as its just proportion thereof, and that the rate so fixed by the said East Tennessee, Virginia and Georgia Railroad Co. was and is barely sufficient to cover the cost of transportation, and that by reason thereof the said Memphis and Charleston Railroad Co. has been defrauded of a large sum, to wit, the sum of not less than three hundred thousand dollars.

Par. 20.

Your orator charges that the accounts and books of said Memphis and Charleston Railroad Co. since the execution of said pretended lease have been and still are in the possession and keeping of the officers so appointed as above stated, and who are in fact the officers and agents of said East Tennessee, Virginia and Georgia Railroad Co.; that the accounts between the said East Tennessee, Virginia and Georgia Railroad Co. and said Memphis and
26 Charleston Railroad Co. have been kept under the exclusive direction and control of said East Tennessee, Virginia and Georgia Railroad Co.; and that said East Tennessee, Virginia and Georgia Railroad Co. has caused a large amount of the simulated debt to be charged against said Memphis and Charleston Railroad Co. and has caused to be given credit therefor on the books so kept as aforesaid, the said East Tennessee, Virginia and Georgia Railroad Co., your orator charges that the amount of said simulated debt is unknown to him, but he avers it to be not less than the sum of three hundred thousand dollars.

Par. 21.

Your orator charges that upon a fair and just accounting between the Memphis and Charleston Railroad Co., and the East Tennessee, Virginia and Georgia Railroad Co., for matters and things growing out of said pretended lease and its modification, the said East Tennessee, Virginia and Georgia Railroad Co. would be largely indebted, by many hundred thousand dollars, to the Memphis and Charleston Railroad Co.; that the accounting between said companies is necessarily difficult and intricate, owing to the fact that the books of account between said companies have been under the exclusive control and management, since the execution of
27 said pretended lease, of the East Tennessee, Virginia and Georgia Railroad Co., and are in the possession of the officers of said East Tennessee, Virginia and Georgia Railroad Co.; and that a reference to *be* register of this court to state the account between these two corporations is essential to the ends of justice.

Par. 22.

Your orator alleges that pending these proceedings an injunction restraining the said East Tennessee, Virginia and Georgia Railroad Co. from the longer control, use, and management of the said Memphis and Charleston Railroad, is the only sufficient and adequate remedy your orator and the other stockholders in said Memphis and Charleston Railroad Co. have to protect them against further injury and loss. And your orator alleges in this connection and in furtherance of the ends of justice, a receiver should be appointed to take charge of the said Memphis and Charleston railroad, and to control and manage the same in the interest of all the stockholders of said Memphis and Charleston Railroad Co.

Par. 23.

Your orator alleges that he does not know whether it be true or false, as alleged in the said pretended lease of June 2nd, 1877, and likewise alleged in the modification thereof of date De-
28 cember 2nd, 1879; that said lease and said modification were respectively approved at a regular meeting of the stockholders of the Memphis and Charleston Railroad Company.

Par. 24.

Your orator avers that he was never present at any such meeting, either in person or by proxy; that he never consented to or approved of the execution either of said lease or of said modification, and that his rights as a stockholder in said company are in nowise affected by any such action of a stockholder's meeting at which he was not present, in which he did not participate, and in which his stock was not represented—such action being *ultra vires* and without legal authority.

Par. 25.

Your orator charges that a meeting of the stockholders of the said Memphis and Charleston Railroad Company was held at Huntsville, Alabama, on August 22d, 1882; at said meeting your orator was present as a stockholder in said company, at said meeting a resolution was adopted (against which your orator voted) authorizing the directors of the Memphis and Charleston Railroad Company to appoint a committee to meet a committee of the East Tennessee Virginia and Georgia Railroad Company to nego-
29 tiate terms for the cancellation or abrogation of the existing lease of the Memphis and Charleston railroad to the East Tennessee Virginia and Georgia Railroad Company; authorizing said committee of the Memphis and Charleston Railroad Company to arrange all the details of said cancellation, and to fix the amount to be paid the said East Tennessee Virginia and Georgia Railroad Company, and report to the said board of directors such agreement as they might make with the East Tennessee Virginia and Georgia Railroad Company, and if said agreement was ratified by the directors of the said Memphis and Charleston Railroad Company it was to be binding on the stockholders of said company; when this resolution was offered one of the directors of said Memphis and Charleston Railroad Company stated that it had been discussed by the board of directors of said company, and that a consultation had been held with the president of the East Tennessee, Virginia and Georgia Railroad Company in which it had been stated that on the payment of $400,000.00 by the Memphis and Charleston Railroad Company to the East Tennessee, Virginia and Georgia Railroad Company the last named company would surrender and cancel the lease aforesaid, and the aforesaid resolution was adopted under the
30 influence of this statement and the belief that by the payment of the said $400,000.00 said lease would be abrogated and annulled.

A resolution was also adopted at said stockholders' meeting authorizing the issuance of five millions of additional stock to be sold at eight cents in the dollar to raise said $400,000.00 to be paid to the East Tennessee, Virginia and Georgia Railroad Company for the cancellation and surrender of said lease; against this resolution your orator also voted.

Your orator avers that the directors of the Memphis and Charleston Railroad Company will not and your orator cannot institute suit in the name of said company for the purpose of having said lease declared null and void and set aside.

Par. 26.

Your orator mak-s defendants to this bill, the said East Tennessee, Virginia and Georgia Railroad Company, and the said Memphis and Charleston Railroad Company, to the end, therefore, that said defendants may, if they can, show cause why your orator should not have the relief herein and hereby prayed, and may, according to the best and utmost of their knowledge, remembrance, information, and belief, full, true, direct, and perfect answers
31 make, without oath, to such of the statements and averments of this bill as by the note hereunder written they are required to make answer unto.

May it please your honor to grant unto your orator the writ of subpœna to be served on the defendant, the said Memphis and Charleston Railroad Company, and also the writ of subpœna to be served on the said East Tennessee, Virginia and Georgia Railroad Company requiring said defendants to plead, answer, and demur to this bill within the time and in the manner prescribed by law and the rules of this court.

And your orator prays that the said pretended lease and the said pretended modification thereof be delivered up to the register of this court by the said defendants, and that the same be cancelled, annulled, and decreed by this court to be null and void.

And your orator prays that it be referred to the register of this court to take proof and state a full and just account of and concerning all and singular the matters and things averred and set forth in this bill, and that said register report the same to this court and that the amount, if any, ascertained and reported by said register to be due and owing from said defendants, the said East
32 Tennessee, Virginia and Georgia Railroad Co., to the said defendant, the said Memphis and Charleston Railroad Co., may be decreed and ordered to be paid to the said Memphis and Charleston Railroad Co.

And your orator further prays that the said defendants, The East Tennessee, Virginia and Georgia Railroad Company, and the Memphis and Charleston Railroad Co., be required and compelled to bring and produce before said register, on the stating of said account, such documents, books, and papers within their control or possession as may be necessary or proper in stating the account herein prayed for.

Your orator further prays that the said East Tennessee, Virginia

and Georgia Railroad Co. be enjoined and restrained, by writ of injunction, to be issued from this court, from further controlling, using, managing, or running the said Memphis and Charleston railroad.

And your orator further prays an account be taken and stated by the register of this court, of the profits that were made by said Memphis and Charleston Railroad Co., and which were received by the East Tennessee, Virginia and Georgia Railroad Co.,
33 and the profits which should have been made, if the said Memphis and Charleston railroad had been fairly and honestly conducted and managed by the said East Tennessee, Virginia and Georgia Railroad Co.

Your orator further prays that a receiver may be appointed by this honorable court to take possession of the road-bed of said Memphis and Charleston railroad, with all of its equipments, locomotives, cars, and rolling stock, and that he manage, direct, control, and run the same for the benefit and in the interest of the stockholders of the Memphis and Charleston Railroad Co.; and your orator prays that the said board of directors of the Memphis and Charleston Railroad Company be enjoined and restrained from making any contract with the East Tennessee, Virginia and Georgia Railroad Company for the payment by the Memphis and Charleston Railroad Company to the East Tennessee, Virginia and Georgia Railroad Company of the sum of $400,000.00, or any other sum for the cancellation and surrender of said lease; and your orator prays that the said directors of the Memphis and Charleston Railroad Company be enjoined and restrained from issuing five million (5,000,000) of new stock, or any other amount of new stock
34 to be sold for the purpose of raising $400,000.00 to buy in said lease.

And your orator prays for such further and other or different relief as the facts and equities of his case may entitle him to.

(S'g'd) F. P. WARD AND
WALKER AND SHELBY,
For Compl't.

Before me, W. P. Neeman, register in chancery of the first district, eastern chancery division, of the State of Alabama, this day personally come L. P. Walker, one of the solicitors of the complainant in the foregoing case, and makes oath in due form of law, that neither the president nor other head thereof, secretary, cashier, nor managing agent of the Memphis and Charleston Railroad Company, nor of the East Tennessee, Virginia and Georgia Railroad Company reside within the State of Alabama, but that they reside out of said State.

(S'g'd) L. P. WALKER.

Sworn to and subscribed before me, this the 31st day of August, 1882.

W. P. NEWMAN, *Register.*

Endorsed: Filed Aug. 31, 1882. W. P. Newman, register.

(Exhibits to bill and summons omitted in printing, per stipulation.)

98 *Petition for Removal, &c.*

In Chancery, First Division, Eastern Division of the State of Alabama.

JOHN W. GRAYSON, Complaint,
vs.
MEMPHIS AND CHARLESTON RAILROAD COMPANY and EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY, Defendants.

To the honorable chancery court for the eastern division of the State of Alabama, sitting for the first district thereof, at Huntsville.

Your petitioner, the East Tennessee, Virginia and Georgia Railroad Company, respectfully shows to this honorable court that the matter and amount in dispute in the above entitled cause, exceeds, exclusive of costs, the sum or value of five hundred dollars.

That the controversy in said suit is between citizens of different States, and that petitioner was at the time of this commencement of this suit, and still is a citizen of the State of Tennessee, and that the complainant, the said John W. Grayson, was then, and still is a citizen of the State of Alabama.

Your petitioner states that in the said suit above mentioned there is a controversy which is wholly between citizens of different States, and which can be fully determined as between them, to wit, a controversy between the said petitioner and the said John W. Grayson. Your petitioner desires to remove this cause to the circuit court of
99 United States for the northern district of Alabama, and he offers with this his petition for such removal a bond, with good and sufficient surety for his entering said circuit court of the United States, on the first day of its next session, a copy of the record in this suit and for paying all costs that may be awarded by said circuit court, if said court shall hold that this suit was wrongfully or improperly removed thereto, and petitioner prays this honorable court to proceed no further herein, except to make the order of removal, required by law, and to accept the said surety and bond, and to cause the record herein to be removed into said circuit court of the United States, in and for the northern district of Alabama, and petitioner will ever pray &c.

MILTON HUMES,
HUMES, GORDEN & SHEFFEY,
Sol's for Petitioners.

Sworn to and subscribed before me this Sept. 4th, 1882.
W. P. NEWMAN, *Register.*

Endorsed: Filed Sept. 4th, 1882. W. P. Newman, register.

100 *Bond for Removal.*

STATE OF ALABAMA, *Madison County:*

Know all men by these presents that we, the East Tennessee, Vir-

ginia and Georgia Railroad Company as principal, and Thomas Jamar and Charles H. Halsey as sureties, are held and firmly bound unto John W. Grayson in the penal sum of two hundred dollars, the payment whereof well and truly to be made unto the said John W. Grayson, his heirs and assigns, we bind ourselves, our heirs, representatives, and assigns, jointly and severally, by these presents. Yet, upon these conditions, the said East Tennessee, Virginia and Georgia Railroad Company having petitioned the chancery court of Madison county, in and for the first district, eastern division of the State of Alabama, for the removal of a certain cause therein pending wherein John W. Grayson is complainant and the Memphis and Charleston Railroad Company and said East Tennessee, Virginia and Georgia Railroad Company are defendants, to the circuit court of the United States in and for the northern district of Alabama.

Now, if the East Tennessee, Virginia and Georgia Railroad Company, your petitioner, shall enter in the said circuit court of the United States on the first day of its next session a copy of the record in said suit and shall well and truly pay all costs that may be awarded by said circuit court of the United State- if said court shall hold that said suit was wrongfully removed thereto,
101 then this obligation to be void, otherwise to remain in full force and virtue.

Witness our hands and seals this 4th day of September, 1882.

EAST TENNESSEE, VIRGINIA &
GEORGIA RAILROAD COMPANY. [SEAL.]
By MILTON HUMES.
Attorney, &c.
THOS. JAMAR. [SEAL.]
CHARLES H. HALSEY. [SEAL.]

STATE OF ALABAMA, *Madison County:*

Before me, William P. Newman, register in chancery for the 1st district eastern chancery division of the State of Alabama, personally appeared Thomas Jamar and Charles H. Halsey, who are securities upon the foregoing bond, who being each duly sworn, say that they are citizens of Madison county, Alabama, and that they are worth in property situated in said county two hundred (200.00) dollars over and above all liabilities and exemptions secured to them by the constitution and laws of the State of Alabama.

THOS. JAMAR.
CHAS. H. HALSEY.

Sworn to and subscribed before me this 4th day of September, 1882.

W. P. NEWMAN, *Register.*

(Certificate to transcript from State court, order granting leave to file amended bill, amendment to bill, answer and exhibits thereto, replication, demurrer, order setting demurrer for argument, continuance, withdrawal, of answer, & demurrer filed and set for argument omitted in printing, per stipulation.)

184 *Motion to Remand.*

In the Circuit Court of the United States for the Northern District of Alabama.

JOHN W. GRAYSON, Complainant,
vs.
THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY *et al.*, Defendants.

The above-entitled cause having been removed on petition of the defendant, The East Tennessee, Virginia and Georgia Railroad Company, filed in the chancery court for the eastern division and first district, in Madison county, State of Alabama, and all defendants having interposed demurrers to the bill of complaint herein in this court, now comes the complainant and moves the court to enter and makes its order remanding said cause back from this court into the said chancery court for said division, district, and county of Madison aforesaid for hearing, and for ground of such motion movcant says that one of the defendants, The East Tennessee, Virginia and Georgia Railroad Company, is, as shown by the pleadings herein, a corporation created under the laws of the State of Tennessee and of Georgia and residing therein, and is not a resident or citizen of the State of Alabama; that the Memphis and Charleston Railroad Company is an incorporated company created by the law of the State of
185 Alabama, and is a citizen and resident in said State of Alabama and is located in said northern district thereof; that complainant, Jno. W. Grayson, is a citizen of the State of Alabama, residing in the northern district thereof aforesaid, and that, as shown by the pleadings herein, the controversy in this suit between complainant and the defendants is not one which is wholly between citizens of different States, and which can be fully determined as between them, but, on the contrary, the matters in controversy cannot be fully determined in a court hearing the same without the presence of both of the companies defendants in said cause.

May 19th, 1884.

CABANISS & WARD &
L. P. WALKER,
Solicitors for Grayson.

Endorsed: Jno. W. Grayson *vs.* The East Tennessee, Virginia & Georgia R. R. Co. *et al.* Motion to remand cause to State court filed May 19th, 1884. A. W. McCullough, clerk.

Certified Copy of Decree Rendered in State Court.

JOHN W. GRAYSON
vs.
MEMPHIS & CHARLESTON RAILROAD COMPANY *et al.* } 1293.

Come the parties by their solicitors, and on motion, it appearing that the non-resident corporation, The East Tennessee, Virginia and Georgia Railroad Company, has filed a petition to remove this cause to the circuit court of the United States for the northern dis-

186 trict of Alabama, and filed a bond payable and conditioned as the law in such cases provides, and it also appearing by inspection of the records, pleadings, &c., in this case that the controversy and matters involved is between citizens of different States: It is ordered that said cause be removed to the said circuit court of the United States, and that the said petition and bond be filed in this court, and copies of which, together with the records and proceedings of this court and the original papers in this cause, be certified to said court, to the end that the said court may take jurisdiction hereof; and it is further ordered that the said movant and petitioner pay all the costs of this court now due or that may be due in executing this order, for which execution may issue.

I, William P. Newman, register in chancery for the first district of the eastern division of Alabama, do hereby certify that the above and foregoing two (2) pages contain and embrace a full, true, and perfect copy of a decree rendered by said court in the cause of John W. Grayson *vs.* The M. & C. R. R. Co. *et al.*, as appears from the records and files of said court in said cause, at Jan'y term thereof, 1883, and on the 9th day of January, 1883.

Given under my hand this 20th day of May, A. D. 1884.

W. P. NEWMAN, *Register.*

187 Endorsed: No. 1293. Grayson *v.* M. & C. R. R. Co. *et al.* Certified copy of decree rendered at Jan'y T., 1883. Filed in open court May 21, A. D. 1884. A. W. McCullough, clerk.

Circuit Court of the United States for the Northern District of Alabama. In Equity.

JOHN W. GRAYSON, Complainant,
vs.
EAST TENN., VA. AND GA. RAILROAD CO. [and] MEMPHIS AND CHARLESTON RAILROAD CO. } 126.

MAY 21st, 1884.

This day this cause came on to be heard upon the motion in writing filed by the complainant, John W. Grayson, to remand the cause to the chancery court for this eastern division and first district, in Madison county, in the State of Alabama, from which it had been removed to this court.

Cause Remanded to State Court.

And said motion having been argued by counsel for the parties and considered by the court, it is now ordered and decreed that said motion be sustained and the cause remanded from this court to the said chancery court.

Appeal Prayed and Allowed.

Thereupon the said defendant, The East Tennessee, Virginia, and Georgia Railroad Company, by its counsel, moved the court for the allowance of an appeal to the Supreme Court of the United States

from said decree remanding this cause to the said chancery court.

On consideration whereof it is ordered by the court that said
188 appeal be, and the same is hereby, allowed. The penalty of the bond for the appeal is fixed at two hundred and fifty dollars, and it is ordered that when the bond is given and approved according to law the appeal hereby allowed shall operate to supercede the decree appealed from. Counsel for the complainant, John W. Grayson, being present when the said appeal was allowed, waived the issue and service of citation.

Opinion of Court.

U. S. Circuit Court, Northern District of Alabama. Special Term, May 19, 1884. In Equity.

JOHN W. GRAYSON

v.

THE EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD COMPANY and THE MEMPHIS & CHARLESTON RAILROAD COMPANY, Defendants.

Heard on motion to remand to the State court.

Messrs. L. P. Walker and L. W. Day for the motion; Messrs. Milton Humes and Poston, contra; Woods, circuit judge.

The bill of complaint was filed in the chancery court of Madison county, in the State of Alabama. It alleged that the complainant was a citizen of the State of Alabama, and that The Memphis
189 & Charleston Railroad Company was a corporation created by and existing under the laws of the State of Alabama, and that the other defendant, The East Tennessee, Virginia and Georgia Railroad Company, was a corporation foreign to the State of Alabama.

The main object and purpose of the bill was to obtain a decree of the court declaring null and void a certain lease made on June 22, 1877, and amended on December 2, 1879, by the Memphis & Charleston Railroad Company to the E. T., Va. & Ga. Railroad Company, of the railroad, station houses, depots, equipments, and appurtenances of every kind of the first-mentioned company for a term of twenty years from and after July 1, 1877.

The bill charged that the lease made on June 2, 1877, and the modification thereof made on December 2, 1879, were *ultra vires* against public policy and null and void.

Another purpose of the bill was that an account might be stated between the E. T., Va. & Ga. Railroad Company and the Memphis & Charleston Railroad Company, and that the former company might be decreed to pay to the latter such sums, if any, as might be found due it on such accounting.

The bill also averred that the directors of the M. & C. R. R. Co. would not and the compl't could not institute a suit in the
190 name of said company for the purpose of having said lease declared null and void and set aside.

The bill was filed August 31, 1882. Before any answer, plea, or demurrer by either of the defendants, to wit, on September 4, 1882,

a petition was filed by the E. T., Va. & Ga. Railroad Co. for the removal of the cause to this court. The ground for removal was stated in the petition as follows: "That in said suit there is a controversy between citizens of different States, and which can be fully determined as between them, to wit, a controversy between the said petitioner, The E. T., Va. & Ga. Railroad Company, and the said John W. Grayson, the complainant."

The record shows that an order was made by the State chancery court for the removal of the cause to this court. On September 12, 1882, a transcript of the record from the State court, consisting of the bill of complaint and exhibits and the petition and bond for the removal of the cause, was filed in this court.

On October 23, 1882, the Memphis & Charleston Railroad Company filed its answer to the bill. It alleged that the said lease and the modification thereof were approved at assemblies or meetings of some of the respondents' stockholders, and that at such meetings the complainant was represented by his proxy and that his stock was voted both for the lease and for the modification thereof.

191 The answer denied "that before the beginning of this suit the complainant made any effort with the board of directors of respondent or with its stockholders to induce remedial action on their part to redress the supposed grievances set up in the bill, and for this reason was not entitled to maintain this suit."

The answer also made the following averment: "It is impossible to conceive that complainant is prosecuting this suit in good faith when it is so manifest that if his suit was to succeed it would result in the destruction of his own stock, and yet it is almost as difficult to suppost that complainant would be willing to destroy the five millions of stock owned by his fellow-stockholders merely because the loss to him would only amount to $75. Respondent is therefore forced to the conclusion that complainant either does not understand his own interests or that he is as regardless of it as he is of the interests of his fellow-stockholders, or that the real object of this suit has not been disclosed in the bill."

The answer prayed that respondent might be dismissed with its reasonable costs and charges in that behalf most wrongfully sustained.

To this answer the complainant filed the general replication on November 11, 1882.

192 The E. T., Va. & Ga. Railroad Company on Jan'y 24, 1883, filed a demurrer to the bill for want of equity and on other grounds.

On April 29, 1884, the Memphis & Charleston Railroad Company, by leave of court, withdrew its answer, and, as the minutes of the court state, filed its demurrer to the bill and the cause was set for hearing thereon. No demurrer was, however, in fact, filed.

In this state of the pleadings the complainant on May 19, 1884, filed a motion to remand the cause to the State court on the ground that the Memphis & Charleston Railroad Company, one of the defendants, and Grayson, the complainant, were both citizens of the State of Alabama, and that the controversy between the complainant

and the defendants is not one which is wholly between citizens of different States, and the matters in controversy cannot be fully determined without the presence of both the defendants. This motion is now submitted to the court for its decision.

The Memphis & Charleston Railroad Company is a citizen of the State of Alabama. It was so held by the Supreme Court of the United States in the case of Memphis, etc., R. R. Co. *v.* Alabama, 107 U. S., 581.

As the complainant is also a citizen of the State of Alabama it must follow that this court is without jurisdiction of the case and that is was improperly removed unless it falls under some
193 exception to the rule laid down in the cases of Blake *v.* McKin, 103 U. S., 336, and Hyde *v.* Ruble, 104 U. S., 407; that the case to be removable must present a controversy wholly between citizens of different States.

It is evident that both the defendants are necessary parties to the main question in the case, namely, whether the lease executed by one to the other is *ultra vires* and therefore null and void. This is a controversy which cannot be decided unless both the parties to the lease are before the court. It is not, as alleged in the petition for removal, a controversy between the complainant and the E. T., Va. & Ga. Railroad Company, but a controversy between the complainant on one side and both the defendants on the other.

The E. T., Va. & Ga. Railroad Company contends, however, that although the controversy may be indivisible, yet that it is one between the complainant and the Memphis & Charleston Railroad Company on the one hand and the E. T., Va. & Ga. Railroad Company on the other, and that by transferring the Memphis and Charleston Railroad Company to the side of the complainant, where it belongs, the parties, complainant and defendant, are citizens of different States. The theory is that the controversy is in fact one between the two railroad companies. This view is not sustained
194 by the record. There does not appear to be any dispute between the two companies. It nowhere appears by the averments of the bill that there is any matter of controversy between them, or that they are not in perfect accord. The controversy is in the first instance between the complainant and the M. & C. Railroad Company touching the powers of the company and the policy which would best subserve its interests, and secondarily with the E. T., Va. [and] Ga. Railroad Company.

We cannot, therefore, take the M. & C. Railroad Company from the position of defendant and range it with the complainant.

If the bill had been brought by the complainant to enjoin the M. & C. Railroad Company from making the lease set out in the bill it is perfectly apparent that the controversy would have been one between the complainant stockholder and the railroad company. It would not have been possible to put both parties on the same side of such a case. It is quite as clear that when the object of the bill is to set aside a lease already made the controversy is between the stockholder and the company, and unless the company chooses to adopt the suit it cannot be regarded as a complainant. From all

that appears by his bill, and it may be fairly inferred from its averments, the M. & C. Railroad Company is insisting on its
195 power to make the lease and on the validity of the lease. The record, therefore, when the petition for removal was filed did not disclose a controversy wholly between citizens of different States, and which could be fully determined between them. Nothing which has since occur-ed in the case puts it in a different light.

I am of opinion, therefore, that the motion to remand must prevail, and it is so ordered.

Endorsed: No. 126. John W. Grayson *v.* The East Tenn., Va. & Ga. Railroad Co. *et al.* Opinion of the court, May 21, 1884. Filed May 21st, 1884. A. W. McCullough, clerk.

Leave Asked to Amend Petition for Removal.

Circuit Court of the United States, Northern District of Alabama.

JOHN W. GRAYSON, Compl't,
vs.
MEMPHIS AND CHARLESTON RAILROAD CO. and EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY, Def'ts. } 126.

MAY 21st, 1884.

In the above-entitled cause comes the East Tennessee, Virginia and Georgia Railroad Company and asks leave of the court to amend the petition for removal of the cause from the State court to this court by adding the name of the Memphis and Charleston Railroad Company immediately after that of John W. Grayson, where it is alleged in said petition that there is a controversy in said suit wholly between citizens of different States, to wit, a controversy between petitioner (meaning this defendant) and John W. Gray-
196 son. By said proposed amendment this defendant desires to arrange the Memphis and Charleston Railroad Company on the side with John W. Grayson as to said controversy. This defendant is advised that this is the arrangement and disposition which the law makes of said parties as to said controversy according to the record in the cause in determining the question as to the jurisdiction of this court, and this defendant in offering this amendment desires to remove any objection which might be made to its said petition for removal on account of any failure to aver with technical accuracy any fact disclosed by the record which might be essential to the maintaining of jurisdiction of the cause by this court.

HUMES, GORDON & SHEFFEY,
Sol's for Def't.

It is ordered that the foregoing petition for leave to amend the petition for removal of this cause to this court be disallowed. Said petition was filed and presented, and the foregoing order disallowing the same made before the making of the order remanding the cause to the State court. This done in open court this the 21st day of May, 1884.

W. B. WOODS,
Circuit Justice.

Bond on Appeal.

Circuit Court of the United States for the Northern District of Alabama.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY, Appellant,

vs.

197 JOHN W. GRAYSON and THE MEMPHIS AND CHARLESTON RAILROAD COMPANY, Appellee-.

Know all men by these presents that we, The East Tennessee, Virginia and Georgia Railroad Company, as principal-, and L. H. Scruggs and George P. Landman, as sureties, are held and firmly bound unto John W. Grayson in the sum of two hundred and fifty dollars, to be paid to the said John W. Grayson, his legal representatives or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this the 20th day of May, 1884.

The condition of the above obligation is such that whereas the above-named The East Tennessee, Virginia and Georgia Railroad Company has prayed and obtained an appeal to the Supreme Court of the United States from a judgment of said circuit court, rendered in said cause on this day, namely, on May the —, 1884, remanding said cause to the State chancery court of Madison county, Alabama, being the first district of the eastern division thereof, and to reverse said judgment:

Now, therefore, if the above-named The East Tennessee, Vir-
198 ginia and Georgia Railroad Company shall prosecute its said appeal to effect and answer all costs and damages if it shall fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and virtue.

EAST TENNESSEE, VIRGINIA AND
GEORGIA RAILROAD COMPANY, [SEAL.]
Per JAMES B. WHITE, *Agent.* [SEAL.]
L. H. SCRUGGS. [SEAL.]
GEO. P. LANDMAN. [SEAL.]

Approved May 21, 1884.

W. B. WOODS,
Circuit Justice.

We, the sureties to the above bond, being each duly sworn, do say that we are each worth two hundred and fifty dollars in property, situated in the said northern district of Alabama, over and above all exemptions allowed by law.

L. H. SCRUGGS.
GEO. P. LANDMAN.

Sworn to & subscribed before me this 20th day of May, 1884.

A. W. McCULLOUGH,
Clerk U. S. Cir. Ct.

(Endorsed:) Filed in open court May 21st A. D. 1884. A. W. McCullough, clerk.

199 UNITED STATES OF AMERICA, *Northern District of Alabama:*

I, A. W. McCullough, clerk of the circuit court of the United States of America in and for said district, do hereby certify that the above and foregoing pages, numbered from 1 to 198, both inclusive, contain a true, full, and complete copy of the papers on file in my office and the proceedings had in said court in case No 126 (in equity), John W. Grayson *vs.* The Memphis and Charleston Railroad Company and the East Tennessee, Virginia and Georgia Railroad Company.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, at office in the city of Huntsville, in said district, this 5th day of September, A. D. 1884.

[Seal Circuit Court U. S., N. D. of Alabama.]

A. W. McCULLOUGH,
Clerk U. S. Circuit Court, Northern District Alabama.

200 *Assignments of Error.*

The court below erred in its order and judgment remanding said cause to the State court.

MILTON HUMES,
Att'y for Appellant.

Endorsed on cover: N. Alabama C. C. U. S. No. 331. The East Tennessee, Virginia and Georgia Railroad Company, appellant, *vs.* John W. Grayson. Filed 2d October, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 331.

EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY, APPELLANT,

vs.

JOHN W. GRAYSON, APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

BRIEF FOR APPELLANT.

WM. M. BAXTER, Solicitor for Appellant.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 331.

EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY, *Appellant*,

versus

JOHN W. GRAYSON, *Appellee.*

The appellant assigns the following errors:

1st. The action of the Court in refusing to permit the East Tennessee, Virginia and Georgia Railroad Company to amend its petition for removal, so as to show that the controversy was between it, on the one side, and the complainant John W. Grayson and the Memphis and Charleston Railroad Company, on the other.—Transcript, p. 23.

2nd. The action of the Court in entering an order remanding the suit to the State Court.—Transcript, p. 19.

BRIEF.

The cause is submitted and is to be tried upon an *agreed transcript.* (Record, p. 1). By this record it appears that John W. Grayson, for himself and other stockholders in like situation, &c., files his bill to have a decree cancelling and annulling a certain lease, made by the Memphis and Charleston Railroad Company (in which he is a stockholder) to the East Tennessee, Virginia and Georgia Railroad Company. This is the main and vital issue of the bill, and if it should fail for this purpose, it would fail for all purposes. All other relief is incidental, merely.

The charge is that the lease is *ultra vires* and void. If so, it was never the act of the corporation, but only an abortive attempt towards the doing of an act which it was powerless to do. As the beneficial ownership of all the corporation possessed is really in the *stockholders*,

the interest of the stockholders is the interest of the corporation. Their interests are identical, and necessarily the same. Except as being the legal holder or trustee of the property for the stockholders, it can not be said that the corporation has any interest in the property at all, and as trustee it can and really does have no interest adverse to them. In the present case the act complained of has *formally* been performed; but, if complainant is correct in his theory, it has never been performed at all, as a matter of law; and what may have been done is of no binding force upon the corporation nor its stockholders. The very moment it is conceded that the *corporation* is bound by the act complained of, then it follows as a necessary consequence that complainant is bound; as, whatever binds it, also binds him. *This* shows that their interests are identical.

If complainant's theory is correct, then the Memphis and Charleston Railroad Company itself might prosecute this suit, and pray for identically the same relief that the complainant prays for against appellant. In fact the corporation is the proper party to bring such a suit, and unless complainant can and does show a refusal upon the part of the corporation, after request, &c., he has no right to prosecute such a suit in his own name.

Hawes vs. Oakland, 104 U. S., 450.

When such a case is made, it is analogous to a suit "in the name of A" (the legal holder or owner) "for the use of B" (the beneficial owner). The corporation is a necessary party because of its legal ownership; but its place is really upon the side of the stockholder, and its interests are identical with his. If it were a suit at law (if such a suit could be) the stockholder would have the right to use the name of the corporation, for the use of the parties entitled—i. e., all other stockholders, upon indemnifying the corporation against costs. By bringing the suit in his own name, and making the corporation a defendant to a suit in equity, he, in effect, does exactly this same thing. He, in effect, prosecutes a suit in the name of the corporation for the benefit of himself and other stockholders. His relief is accomplished through the corporation. Such recovery as he may obtain is in the name of the corporation. His prayer for relief in this very bill recognizes this fact, and his prayer is based upon this theory. (Record, p. 14).

I do not think this can be made analogous to a case, as supposed by Justice Woods, of a threatened purpose of the Memphis & Charleston Railroad Company to make such a lease and a bill filed in such case to prevent it. In such a case, no one would be a necessary de-

fendant except the corporation itself: or, as a corporation can act only through its officers or directors, the real defendants would be such officers and directors; and the object would be to prevent them as such from using the corporate seal or signing the corporate name to such contract, or from delivering possession, &c.

In the case before us the lease is formally executed, the possession changed, and the contract executed, so far as it lawfully can be. The beneficial interest is in the stockholders. The corporation is a mere naked or passive trustee. The controversy to annul or vacate the lease is practically and to all intents and purposes, when the parties are arranged upon the side where their interests naturally place them, a suit between the Memphis and Charleston Railroad Company, for the use of John W. Grayson and others, and the East Tennessee, Virginia and Georgia Railroad Company.

* * *

The present suit is not the same either in facts or principle as the case in 113 U. S., 249, as I respectfully submit. In that case the two railroad companies *joined* in an answer, insisting upon the validity of the lease. There is no such state of facts here. It does not appear that the Memphis and Charleston Railroad Company takes any such position.

In that case, too, certain individuals were sued, some of whom were residents and *citizens of the same state with complainants*, and a personal decree was prayed against them, in a certain contingency. There are no such facts in this case. That case was decided upon its facts, and how far, if at all, it may be considered as controlling in this case, is for the Court yet to determine. I do not concede its applicability to the present case. The facts not being identical, and the case being decided upon its own facts, I cannot assume that the decision in that case is controlling in this: nor do I concede that "it settles the "proposition that a case involving such a controversy as that *here* pre- "sented, is not removable from the State Court"

For these reasons, which might be elaborated, I submit that the Circuit Court erred in refusing to allow petition of removal to be amended as prayed, and also in remanding the cause.

W. M. BAXTER,
Counsel for Appellant.

119-240

OCT 14 1886
JAMES H. MCKINNEY
CLERK

BRIEF FOR APPELLEE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 331.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY, APPELLANT,

vs.

JOHN W. GRAYSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

THE EAST TENNESSEE, VIRGINIA AND GEORGIA RAILROAD COMPANY, APPELLANT,

vs.

JOHN W. GRAYSON, APPELLEE.

BRIEF FOR APPELLEE.

The original bill in this case was filed in the Alabama Court of Chancery by the Appellee, a citizen of Alabama and a stockholder in the Memphis and Charleston Railroad Company, suing in behalf of himself and such other stockholders in said Company as should come in and contribute to the expenses of the suit, against the Memphis and Charleston Railroad Company, a corporation existing under the laws of Tennessee, Alabama and Mississippi, and the East Tennessee, Virginia and Georgia Railroad Company, a corporation existing under the laws of Tennessee and Georgia; and the purpose of the suit was to obtain a decree of the Court declaring null and void a certain alleged lease made June 22, 1877, and amended December 2, 1879, by the M. & C. R. R. Co. to the E. T. Va. & Ga. R. R. Co., of the railroad, station houses, depots, equipments, and appurtenances of every kind of the first mentioned Company for a term of twenty years,

and for the further purpose of having an account taken and stated between said two Companies. The purposes of the Bill and the history of the case are more fully stated by Mr. Justice Woods in the opinion delivered by him in the Court below, and found in the Transcript of Record, p. 20.

The East Tennessee, Virginia & Georgia Railroad Company removed the case to the U. S. Circuit Court for the Northern District of Alabama. On motion of Appellee, said Circuit Court remanded the case to the State Court. This is an appeal by the E. T. Va. & Ga. Co. from the order and judgment of the Court below remanding the case.

The Appellee relies upon said opinion of Mr. Justice Woods, and upon the authority of the case of Central Railroad Company of New Jersey *vs.* Mills, 113 U. S., 249. This case is almost identical in its facts with the case at bar and the two cannot be distinguished in principle. It settles the proposition that a case involving such a controversy as that here presented is not removable from the State Court.

HENRY E. DAVIS,
F. P. WARD,
R. W. WALKER,
Counsel for Appellee.